On the facts of the case generally the learned District Judge, after a careful consideration of all the evidence, accepted the story of the prosecution, and considered the stories of the appellants to be incredible, and I see no reason to differ from his conclusions.

The appeals are accordingly dismissed and the sentences on Nos. 1 and 3 confirmed. The second accused Hashim Ahmad Angullia was the moving spirit in collecting a gang to beat up the complainants. In view of his special activities and his two previous convictions his sentence is increased to six months rigorous imprisonment, and a fine of $100.00 or two months rigorous imprisonment if the fine is not paid.

Appeal dismissed and sentence on second accused enhanced.

Solicitor for second accused—*A. J. Braga.*

Solicitor for third accused—*E. M. Tampoe Phillips.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

December 6, 1940.

IN RE SHAIK ABDULLAH BIN AHMAD BIN ALI AL TWAY BASALAMAH DECEASED.

[SINGAPORE ORIGINATING MOTION No. 9 of 1940]

Rules of the Supreme Court 1934 O. LIV r. 26—Probate and Administration Ordinance s. 31—Revocation of grant of probate—Court's discretion.

Under s. 31 of the Probate and Administration Ordinance the Court may revoke a grant of probate but the Court has a discretion and will not lightly revoke an appointment of an executor who has had the testator's confidence. In a case where fifteen years had elapsed since the death of the testator the Court assumed (in the absence of evidence to the contrary) that the administration had long since been completed and that an executor and trustee appointed by the Will was then functioning in the latter capacity only; and so there was no ground for revocation of probate.

ADJOURNED ORIGINATING MOTION.

R. L. Eber for applicant.

John Laycock for respondents.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, Ag. C.J.—This is a motion to revoke the probate of the will and codicil of the testator which was granted to the respondent on the 18th November, 1925.

By his will and codicil the testator appointed the respondent, who was his brother, executor and trustee, and declared certain trusts of his immovable property in Singapore until the expiration of the period of 21 years from the death of the survivor of his children. Pending the period of distribution the trustee was to divide the rents as therein provided. There is no allegation that these trusts have not been faithfully carried out.

By clause 6 of his codicil the testator directed as follows:—

> "If my brother Ally bin Ahmad bin Ali al Tway Basalamah should not be living at the time of my death or should decline or be incapable to act as my Executor and Trustee of my said will, I declare my son Shaik Abubakar bin Abdullah bin Ahmad al Tway my Executor and Trustee, and failing him, my next eldest son living at time of my death."

Shaik Abubakar, the testator's eldest son, predeceased him, and the next in succession is the present applicant.

It appears that the respondent having administered the estate for nine years, left for Arabia in June 1934 and has not returned. It is stated in the applicant's affidavit and not denied, that he has no intention of returning. Before leaving Singapore he gave a joint and several Power of Attorney in favour of Shaik Ali bin Awath al Tway and the applicant . This Power of Attorney is general in its terms and makes no special reference to the estate of the above named testator. The Power of Attorney is not such a Power of Attorney as is contemplated by s. 27 of the Trustees Ordinance (Cap. 59), but presumably it has so far proved adequate for the purpose of the collection of the rents of the properties which are subject to the trusts of the will and codicil.

The applicant asks the Court to revoke the grant of probate and to make a fresh grant in the applicant's favour on the ground that the respondent having left the country is "incapable of acting as Executor".

I do not say that the Court has no jurisdiction under s. 31 of the Probate and Administration Ordinance to revoke even a grant of probate, but in the words of the section such revocation must be "for sufficient cause", and the Court clearly has a discretion. The jurisdiction might well be exercised if a sole executor had become insane before he had fully administered the estate, and there may be other cases in which a revocation would be desirable. In the present case, however, there is no suggestion of maladministration and the Court will not lightly revoke the appointment of an executor who had the testator's confidence. A fatal objection is that it is now 15 years since the testator died and, in the absence of evidence

to the contrary, I am entitled to assume that the administration has been completed long since, and that the respondent, who was originally executor and trustee, now functions in the latter capacity only. It may be that the applicant is entitled to make an application under the Trustees Ordinance, but with that I am not concerned.

I am satisfied that the application to revoke the probate is misconceived and must be dismissed with costs.

Motion dismissed.

Solicitors for applicant—*Chan and Eber.*

Solicitors for respondents—*Braddell Brothers.*

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

December 7, 1940.

REX v. J. W. LIM.

[SINGAPORE MAGISTRATE'S APPEAL No. 113 of 1940]

Liquors Revenue Ordinance (Cap. 225)—Sec. 38—Selling of intoxicating drinks on unlicensed premises.

When a restaurant waiter goes outside the restaurant and purchases liquor elsewhere for a customer of the restaurant the sale of liquor takes place where the liquor is appropriated for the purpose of the customer and where the money is paid. Assuming that the restaurant proprietor has no interest in the shop where the liquor is sold or in any profit derived from the transactions there is no sale contrary to s. 38 of the Liquors Revenue Ordinance (Cap. 225). The mere consumption of beer on unlicensed premises is no offence.

Quaere, whether under s. 310 of the Criminal Procedure Code the Court can entertain an appeal by the Crown.

Cases referred to:—

(1) *Ibrahim* v. *Public Prosecutor,* (1932) 2 M.L.J. 46; (1932) F.M.S.L.R. 349.
(2) *Jones v. Mighall,* 48 T.L.R. 636.
(3) *Morgan & Ors. v. Licensing Justices of Aylesford,* (1906) 1 Q.B. 437.
(4) *Pasquier v. Neale,* (1902) 2 Q.B. 287.
(5) *Pletts v. Beattie,* (1896) 1 Q.B. 519.
(6) *Pletts v. Campbell,* (1895) 2 Q.B. 229.
(7) *Taylor v. Oram,* 7 T.L.R. 68.

MAGISTRATE'S APPEAL.

John Laycock for accused.

E. N. Griffith-Jones (Crown Counsel) for the Crown.

In this case the accused was charged with permitting the sale of intoxicating liquor on his premises, the Monico Cafe, which were unlicensed premises. After hearing the evidence the Magistrate convicted the accused. He was not informed of any previous conviction and he sentenced the accused to pay a fine of $200.00 and costs. A short time after his announcing sentence a Police Officer came into the Court with a certificate of previous conviction which he produced to the Magistrate but the Magistrate pointed out that having passed sentence he was *functus officio* and could not then alter his sentence. He advised the Crown to appeal against the sentence and the Crown did so.

When the appeal came on for hearing reference was immediately made by the Acting Chief Justice to s. 310 of the Criminal Procedure Code.

John Laycock (for accused) submitted that the relevant section of the Criminal Procedure Code could make no provision for appeals by the Crown against sentence only. Section 322 of the same code while dealing with revisions only gave the Judge power to exercise the powers conferred by s. 305, s. 309, s. 310 and s. 311 of that code which merely refer back to s. 310 which again made no provision for appeals against sentence. He therefore contended that the appeal against sentence by the Crown did not lie. He further argued that in any case the conviction was itself bad on the facts as proved. The customer had gone into the Monico Cafe and sent one of the waiters out to buy him a bottle of beer. He paid the waiter $1.00 and the waiter went across the road and purchased a bottle of beer at a shop for 70 cents. The waiter never accounted to him for the balance of 30 cents. The proprietor of the restaurant had no interest in the shop and made no profits from the sale of the beer. He submitted that the waiter was the agent of the customer for the purpose of buying the beer and that the sale took place in the shop where the beer was appropriated to the customer and where the money was paid for the beer. He submitted that what the waiter did with the extra 30 cents was no concern of the restaurant proprietor unless he made a profit thereby and in this case the evidence clearly proved that he did not. He referred to the following cases, namely, *Morgan & Ors. v. Licensing Justices of Aylesford*[3], *K. A. Ibrahim v. Public Prosecutor*[1], *Taylor v. Oram*[7], *Pletts v. Beattie*[5], *Pletts v. Campbell*[6], *Pasquier v. Neale*[4] and *Jones v. Mighall*[2].

Griffith-Jones (for the Crown) argued that even if S. 310 gave the Court no power to make any order on an appeal against sentence only, S. 322 gave the Court, on revision, all the powers contained in S. 310,